

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Home Post Office
Home, Kansas

Docket No. A2012-72

ORDER AFFIRMING DETERMINATION

(Issued March 6, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On November 16, 2011, Pat and Jim Schramm (Petitioners Schramm) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Home, Kansas post office (Home post office).² An additional petition for review was received from Kenneth and Carol Koch (Petitioners Koch).³ The Final Determination to close the Home post office is affirmed.⁴

II. PROCEDURAL HISTORY

On December 1, 2011, the Commission established Docket No. A2012-72 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁵

On December 1, 2011, the Postal Service filed the Administrative Record with the Commission.⁶

² Petition for Review received from Pat and Jim Schramm regarding the Home, Kansas post office 66438, November 16, 2011 (Schramm Petition). On November 30, 2011, Petitioners Schramm submitted an Addendum to their Petition for Review consisting of local newspaper articles related to the Home post office closure (Schramm Addendum).

³ Petition for Review received from Kenneth and Carol Koch regarding the Home, Kansas post office 66438, November 29, 2011 (Koch Petition).

⁴ The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

⁵ Order No. 1016, Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 1, 2011.

⁶ The Administrative Record is included with the United States Postal Service Notice of Filing, December 1, 2011 (Administrative Record). A United States Postal Service Notice of Supplemental Filing was also filed, January 10, 2012 (Supplemental Filing). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Home, Kansas Post Office and Establish Service by Rural Route Service (Final Determination).

The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁷

Petitioners filed participant statements supporting their Petitions.⁸

III. BACKGROUND

The Home post office provides retail postal services. Final Determination at 2. There were no post office box customers or delivery customers served through this post office. The Home post office, an EAS-53 level facility, provides retail service from 8:00 a.m. to 12:00 p.m., Monday through Friday, and is closed on Saturday. Lobby access hours are the same as retail access hours. *Id.*

The postmaster position became vacant on September 28, 1996 when the Home postmaster was promoted. Supplemental Filing at 2. A non-career officer-in-charge (OIC) was installed to operate the post office. Retail transactions average 14 transactions daily (15 minutes of retail workload). Final Determination at 2. Post office receipts for the last 3 years were \$14,693 in FY 2008; \$15,610 in FY 2009; and \$14,306 in FY 2010. There was one permit or postage meter customer. *Id.* By closing this post office, the Postal Service anticipates savings of \$25,042 annually. *Id.* at 8.

After the closure, retail services will be provided by the Marysville post office located approximately 7 miles away.⁹ *Id.* at 2. Delivery service will continue to be provided by rural route service through the Marysville post office, as it had been in the past, to Home post office customers. The Marysville post office is an EAS-18 level post office, with retail hours of 8:30 a.m. to 11:00 a.m. and 12:00 p.m. to 4:30 p.m., Monday through Friday, and 9:00 a.m. to 10:30 a.m. on Saturday. Final Determination at 2;

⁷ United States Postal Service Comments Regarding Appeal, January 10, 2012 (Postal Service Comments).

⁸ Participant Statement received from Pat and Jim Schramm, December 23, 2011 (Schramm Participant Statement); Participant Statement received from Kenneth and Carol Koch, December 23, 2011 (Koch Participant Statement).

⁹ MapQuest estimates the driving distance between the Home and Marysville post offices to be approximately 6.72 miles (9 minutes driving time).

Supplemental Filing at 2. Three-hundred-twenty-eight (328) post office boxes are available. Final Determination at 2. The Postal Service will continue to use the Home name and ZIP Code. *Id.* at 6-7, Concern No. 1.

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioners oppose the closure of the Home post office. Petitioners Koch assert that the post office is the heart of the Home community and closure would be detrimental to that sense of community. Koch Participant Statement at 3-4. Petitioners dispute the Postal Service's calculation of economic savings, noting that the OIC is not salaried and receives no fringe benefits. Schramm Petition at 1; Schramm Participant Statement at 1; Koch Participant Statement at 3. Petitioners are concerned that Home residents will not receive regular and effective postal services from the rural carrier. Koch Petition at 1; Koch Participant Statement at 2. Petitioners assert that the Home post office may not be closed solely for financial reasons. Koch Petition at 1.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Home post office. Postal Service Comments at 2. The Postal Service believes the appeal raises four main issues: (1) the effect on postal services; (2) the impact on the Home community; (3) the economic savings expected to result from discontinuing the Home post office; and (4) the Postal Service's failure to follow procedures required by law. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Home post office should be affirmed. *Id.*

The Postal Service explains that its decision to close the Home post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);

- lack of projected growth in the area;
- minimal impact on the community; and
- expected financial savings.

Id. at 5. The Postal Service contends that it will continue to provide regular and effective postal services to the Home community when the Final Determination is implemented. *Id.*

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by the Petitioners regarding the effect on postal services, the effect on the Home community, economic savings, and the effect on postal employees. *Id.* at 15.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given

60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

The Administrative Record indicates the Postal Service took the following steps in providing notice of its intent to close. On March 28, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Home post office. Final Determination at 2. A total of 176 questionnaires were distributed to delivery customers. Other questionnaires were made available at the retail counter. A total of 51 questionnaires were returned. On April 7, 2011, the Postal Service held a community meeting at Blue Valley Telecommunications to address customer concerns. Fifty-one (51) customers attended. *Id.*

The Postal Service posted the proposal to close the Home post office with an invitation for comments at the Home and Marysville post offices from July 20, 2011 through September 20, 2011. *Id.* The Final Determination was posted at the same two post offices from October 17, 2011, through November 18, 2011. Administrative Record, Item No. 49.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

The Postal Service must also comply with the provisions of 39 U.S.C. § 101(b), which prohibits closing any small post office solely for operating at a deficit.

Effect on the community. Home, Kansas is an unincorporated community located in Marshall County, Kansas. Administrative Record, Item No. 16. The community is administered politically by Marshall County. Police protection is provided by the Marshall County Sheriff. Fire protection is provided by the Home Volunteer Fire Department. The community is comprised of those working in farming or agriculture. *Id.* Residents may travel to nearby communities for other supplies and services. See *generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Home community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Home post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 6-7.

Petitioners Koch raise the issue of the effect on the community, and state that the Postal Service failed to consider the effect of closing the Home post office on the community. Koch Participant Statement at 1. The Postal Service responds that a community's identity comes from the interest and vitality of its residents and their use of its name. Postal Service Comments at 9. The Postal Service asserts that it is preserving the use of the Home name and ZIP Code. *Id.*

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Home postmaster was promoted September 28, 1996, and that an OIC has operated the Home post office since then. Supplemental Filing at 2. It asserts that after the Final Determination is implemented, the temporary OIC may be separated and that no other Postal Service employee will be adversely affected. *Id.*

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Home post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Home customers. Postal Service Comments at 6. It asserts that customers of the closed Home post office may obtain retail services at the Marysville post office located 7 miles away. Final Determination at 2. Delivery service will continue to be provided by rural route service through the Marysville post office, as it has been in the past. Any Home post office box customers may obtain Post Office Box service at the Marysville post office, which has 328 boxes available. *Id.*

For customers choosing not to travel to the Marysville post office, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 6. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.*

Petitioners contend that the rural carrier will not provide regular and effective postal services. Koch Petition at 1; Koch Participant Statement at 2. The Postal Service responds that the rural carrier will provide the same degree of regular and effective postal services as the Home post office. Postal Service Comments at 6-8.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$25,042. Final Determination at 7-8. It derives this figure by summing the following costs: postmaster salary and benefits (\$20,492) and annual lease costs (\$4,550), minus the cost of replacement service (\$0). *Id.*

Petitioners dispute the Postal Service's calculation of economic savings, as the OIC earns less than a postmaster's salary and has no fringe benefits. Schramm Petition at 1; Schramm Participant Statement at 1; Koch Participant Statement at 3.

Petitioners contend that their post office was selected for closure solely for financial reasons. Koch Petition at 1.

The Home post office postmaster was promoted on September 28, 1996. Supplemental Filing at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, will be offered an opportunity to transfer, but may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Home post office has been staffed by an OIC for approximately 15 years, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

Section 101(b). Section 101(b) prohibits closing any small post office solely for operating at a deficit. Petitioners allege that the Postal Service is closing the Home post office solely for economic reasons. Koch Petition at 1.

To be sure, economics plays a role in the Postal Service's decision. However, the Commission is not prepared to conclude that the Postal Service's determination violates section 101(b). In addition to considering workload at the Home post office (revenues declining and averaging only 14 retail transactions per day), the Postal Service took into account other factors such as the postmaster vacancy, the minimal impact on the community, and expected financial savings. In addition, it considered the alternate delivery and retail options available to customers. Final Determination at 2.

The Postal Service did not violate the prohibition in section 101(b) on closing the Home post office solely for operating at a deficit.

VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Home post office is affirmed.¹⁰

It is ordered:

The Postal Service's determination to close the Home, Kansas post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

¹⁰ See footnote 4, *supra*.

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Home post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster retired on September 28, 1996. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only a non-career OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

A non-career OIC has been in place for more than 15 years. Given this extended period of time, and the Postal Service's current financial difficulties, it is clear that the Postal Service has no obligation to maintain a full-time postmaster in small facilities such as Home. Upon closure of the facility, the Postal Service may, at most, avoid continuing to pay the OIC level salary.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data were in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

I agree with the concerns expressed by my colleague, Vice Chairman Langley, regarding the addition of post-record information in post office appeals, and in the omission of revenue derived from permit and postage meter customers.

Moreover, the Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of Home, Kansas and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Administrative Record indicates that a non-career postmaster relief (PMR) has been in charge of this facility since January 2001, not an EAS-53 postmaster.

However, the Postal Service filed an Addendum to the Administrative Record clarifying that this post office has been staffed by an officer-in-charge for over 15 years. Postal Service Addendum at 2. The Addendum seeks to add post-record information for the Commission's consideration on appeal. However, by statute, the Commission may only consider "the record before the Postal Service in the making of such determination[s]." 39 U.S.C. § 404(d)(5). The Postal Service should correct the Administrative Record to indicate that a PMR has been in charge of the Home post office for over 15 years, and reflect the PMR's salary and benefits in its cost savings analysis. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

In addition, the Administrative Record indicates that there is one permit holder. Administrative Record, Item No. 15 at 1. According to the Postal Service, it only counts retail window transactions and that revenue from permit/postage meter customers is not included because permit and postage meter customers typically use Bulk Mail Entry Units (BMEUs), carriers, or Postal Service drop boxes.¹ However, there is no indication in the Administrative Record if the permit customer utilizes BMEUs, carriers, or drop boxes. It is important for the Postal Service to accurately reflect all business activities at each post office to determine the potential impact on the community it serves, especially since revenues have been relatively stable over the past 3 years.

¹ Postal Service Comments at 12, n.56, 57.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Home post office and should be remanded.

Nanci E. Langley